

Bill No. SB 848

Barcode 132188    Comm: RCS    03/30/2006 03:54 PM

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Proposed Committee Substitute by the Committee on Ways and Means

1                                    A bill to be entitled

2            An act relating to state buildings and

3            facilities; amending s. 255.249, F.S.;

4            requiring that the department annually report

5            to the Executive Office of the Governor and the

6            Legislature certain information concerning

7            leases that are due to expire and any

8            amendments and supplements to and waivers of

9            the terms and conditions of lease agreements;

10           requiring that specified clauses be included in

11           the terms and conditions of a lease which may

12           not be amended, supplemented, or waived;

13           amending s. 255.25, F.S.; requiring that the

14           Department of Management Services approve the

15           terms of any lease by a state agency; requiring

16           a financial analysis if the department approves

17           an amendment or supplement to or waiver of a

18           term or condition of a lease agreement;

19           requiring that the department conduct a

20           cost-benefit analysis and obtain specific legal

21           authority before entering into certain leases;

22           providing requirements for the analysis;

23           providing legislative intent with respect to

24           the use of state-owned buildings; requiring

25           that the Department of Management Services

26           create a plan for fully using such buildings

27           before leasing private buildings; requiring an

28           annual report to the Legislature and the

29           Governor; amending s. 255.503, F.S.; requiring

30           that the department provide an analysis to the

31           Legislature, the Governor, and State Board of

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1 Administration before recommending or taking  
2 action to dispose of a facility within the  
3 Florida Facilities Pool; providing for a delay  
4 in such disposition if the President of the  
5 Senate or the Speaker of the House of  
6 Representatives objects within a specified  
7 time; providing an effective date.

8

9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Subsection (3) and paragraph (e) of  
12 subsection (4) of section 255.249, Florida Statutes, are  
13 amended to read:

14 255.249 Department of Management Services;  
15 responsibility; department rules.--

16 (3) The department shall, to the extent feasible,  
17 coordinate the vacation of privately owned leased space with  
18 the expiration of the lease on that space and, when a lease is  
19 terminated before expiration of its base term, will make a  
20 reasonable effort to place another state agency in the space  
21 vacated. Any state agency may lease the space in any building  
22 that was subject to a lease terminated by a state agency for a  
23 period of time equal to the remainder of the base term without  
24 the requirement of competitive bidding. The department shall  
25 annually publish a report that lists, by agency, all leases  
26 that are due to expire within 24 months. The annual report  
27 must include the following information for each lease:  
28 location; size of leased space; current cost per leased square  
29 foot; lease expiration date; and a determination of whether  
30 sufficient state-owned office space will be available at the  
31 expiration of the lease to house affected employees. The

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1 report must also include a list of amendments and supplements  
 2 to and waivers of terms and conditions in lease agreements  
 3 which have been approved pursuant to s. 255.25(2)(a) during  
 4 the previous 12 months and an associated comprehensive  
 5 financial analysis showing that any amendment, supplement, or  
 6 waiver is in the state's long-term best interest. The  
 7 department shall furnish this report to the Executive Office  
 8 of the Governor and the Legislature by September 15 of each  
 9 year.

10 (4) The department shall promulgate rules pursuant to  
 11 chapter 120 providing:

12 (e) Acceptable terms and conditions for inclusion in  
 13 lease agreements. Such terms and conditions must include, at a  
 14 minimum, the following clauses, which may not be amended,  
 15 supplemented, or waived:

16 1. As provided in s. 255.2502, "The State of Florida's  
 17 performance and obligation to pay under this contract is  
 18 contingent upon an annual appropriation by the Legislature."

19 2. "The Lessee shall have the right to terminate,  
 20 without penalty, this lease in the event a State-owned  
 21 building becomes available to the Lessee for occupancy during  
 22 the term of said lease for the purposes for which this space  
 23 is being leased in the County of \_\_\_\_\_, Florida, upon  
 24 giving 6 months' advance written notice to the Lessor by  
 25 Certified Mail, Return Receipt Requested."

26 Section 2. Subsections (2) and (4) of section 255.25,  
 27 Florida Statutes, are amended to read:

28 255.25 Approval required prior to construction or  
 29 lease of buildings.--

30 (2)(a) Except as provided in ss. 255.249 and s.  
 31 255.2501, a no state agency may not lease a building or any

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1 part thereof unless prior approval of the lease terms and  
 2 conditions and of the need therefor is first obtained from the  
 3 Department of Management Services. The department may not  
 4 approve any term or condition in a lease agreement which has  
 5 been amended, supplemented, or waived unless a comprehensive  
 6 financial analysis demonstrates that such amendment,  
 7 supplement, or waiver is in the state's long-term best  
 8 interest. Any approved lease may include an option to purchase  
 9 or an option to renew the lease, or both, upon such terms and  
 10 conditions as are established by the department subject to  
 11 final approval by the head of the Department of Management  
 12 Services and s. 255.2502.

13 (b) Before the Department of Management Services  
 14 enters into a lease on behalf of one or more state agencies of  
 15 privately owned office space of 100,000 square feet or  
 16 executes two or more leases with the same private entity  
 17 within a 1-year period which in combination equal 100,000  
 18 square feet, the department must conduct a cost-benefit  
 19 analysis to determine if the lease is in the state's best  
 20 interest. The Department of Management Services may not enter  
 21 into a lease described in this paragraph without specific  
 22 legal authority. Nothing in this section shall be construed to  
 23 provide such authority. The analyses must consider:

24 1. The cost to lease versus the cost to buy and the  
 25 cost to build.

26 2. The sufficiency of tenant-improvement funds  
 27 provided by the landlord to:

28 a. Adequately ensure that the leased building can be  
 29 maintained at or improved to a "B" classification on the  
 30 Building Owners and Managers Association (BOMA) Metropolitan  
 31 Base Building Classification for the duration of the lease,

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including option years;

b. Meet the workspace-allocation standard of 180 square feet per full-time equivalent employee; and

c. Meet future agency needs for reconfiguring space, replacing paint and carpet, and updating technology during the duration of the lease, including option years.

3. The fiscal impact of each modification or deletion of a traditional or standard provision of the state lease agreement which could increase the state's long-term costs.

(c)(b) The approval of the Department of Management Services, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified compliance with applicable leasing criteria as may be provided pursuant to s. 255.249(4)(k) and has determined such lease to be in the best interest of the state. Such a lease which is for a term extending beyond the end of a fiscal year is subject to the provisions of ss. 216.311, 255.2502, and 255.2503.

(d)(c) The Department of Management Services shall adopt as a rule uniform leasing procedures for use by each state agency other than the Department of Transportation. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(4)(a) Because the state has a substantial financial investment in state-owned buildings, it is legislative policy and intent that when state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before

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leasing privately owned buildings. By September 15, 2006, the Department of Management Services shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals. The department shall furnish this plan to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor by September 15 of each year.

(b) The Department of Management Services shall not authorize any state agency to enter into a lease agreement for space in a privately owned building when suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making such request. The term "state-owned building" as used in this subsection means any state-owned facility regardless of use or control.

(c)(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to the provisions of ss. 255.2501, 255.2502, and 255.2503. Agencies may utilize unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.
2. Renovate applicable spaces.

Section 3. Subsection (7) of section 255.503, Florida Statutes, is amended to read:

255.503 Powers of the Department of Management Services.--The Department of Management Services shall have all the authority necessary to carry out and effectuate the

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1 purposes and provisions of this act, including, but not  
2 limited to, the authority to:

3 (7) Sell, lease, release, or otherwise dispose of  
4 facilities in the pool in accordance with applicable law.

5 (a) One hundred and twenty days before the department  
6 recommends to the Division of State Lands of the Department of  
7 Environmental Protection the disposition of or takes any  
8 binding action to dispose of any facility within the Florida  
9 Facilities Pool, the department shall provide to the President  
10 of the Senate, the Speaker of the House of Representatives,  
11 the Executive Office of the Governor, and the Division of Bond  
12 Finance of the State Board of Administration an analysis of  
13 the proposed facility disposition. The analysis must include:

14 1. The cost benefit of the proposed facility  
15 disposition, including the facility's current operating  
16 expenses, condition, and market value, and viable alternatives  
17 for housing affected state employees; and

18 2. The effect of the proposed facility disposition on  
19 the financial status of the Florida Facilities Pool, including  
20 the effect on rental rates.

21 (b) At any time during the first 90 days of the  
22 120-day period, the President of the Senate or the Speaker of  
23 the House of Representatives may object in writing to the  
24 disposition of the facility. Such objection shall result in  
25 the delay of the disposition until after completion of the  
26 next regular legislative session commencing after the end of  
27 the 90-day period.

28 Section 4. This act shall take effect July 1, 2006.  
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